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# State v. Allan Appellant's Brief Dckt. 44495

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	NO. 44495
Plaintiff-Respondent,	)	
	)	ADA COUNTY NO. CR-FE-2013-18224
v.	)	
	)	
ALEXANDER GRANVILLE	)	APPELLANT'S BRIEF
ALLAN,	)	
	)	
Defendant-Appellant.	)	
_____	)	

STATEMENT OF THE CASE

Nature of the Case

Alexander Allan contends the district court abused its discretion when it revoked his probation. He contends that a sufficient consideration of the mitigating factors in his case reveals that continuing probation would better serve the goals of sentencing. As such, this Court should vacate the order revoking probation and remand this case for a new disposition hearing.

Statement of the Facts & Course of Proceedings

Pursuant to a plea agreement, Mr. Allan pled guilty to one count of delivery of a controlled substance. (R., pp.13-15, 52.) He was 26 years old at the time, and that

conviction constituted his first felony conviction. (Presentence Investigation Report (*hereinafter*, PSI), pp.2, 5-6.) The district court imposed a unified sentence of seven years, with two years fixed, and retained jurisdiction. (R, pp.62-66.)

Mr. Allan performed well in his ensuing rider program. The rider staff reported he “demonstrated a high level of integrity and showed that he is willing to go above and beyond for his program, his sobriety and the overall success for his future.” (PSI, p.118.) He received no formal or informal disciplinary sanctions during that time. (PSI, p.121.) As a result, the rider staff recommended the district court suspend his sentence for a period of probation. (PSI, p.118.) The district court agreed, suspending his sentence for “the balance of the seven (7) year period” of his underlying sentence. (R., p.73.) As one of the terms of that probation, the district court authorized thirty days of discretionary jail time. (R., p.74.)

Mr. Allan did well on probation for approximately fourteen months. (Tr., p.16, Ls.2-4.) However, he subsequently admitted to violating his probation by failing to report to, and stay in contact with, his probation officer, and by changing his residence without permission. (R., pp.81-83; Tr., p.5, L.13 - p.6, L.10.) He explained that, in regard to the failure to report, he was working on the night in question, but acknowledged that was not an excuse for not reporting. (Tr., p.11, Ls.11-21; *see also* Tr., p.20, Ls.1-5 (accepting the need for consequences for all his actions on probation).) The probation officer’s report of violation did not indicate whether any intermediate sanctions had been imposed in Mr. Allan’s case. (R., pp.84-85.)

At the disposition hearing, defense counsel highlighted the fact that there were no allegations that Mr. Allan had been involved with drugs again. (Tr., p.7, Ls.7-11.) He

also noted that Mr. Allan had been behaving appropriately while incarcerated and was making a plan for getting back on his feet, so as to be able to support his family, when released from custody. (Tr., p.18, Ls.2-15.) Defense counsel noted Mr. Allan had already served two months as a result of these violations. (Tr., p.17, Ls.17-19.) Mr. Allan accepted responsibility for his actions, acknowledging that some punishment for those actions was required. (Tr., p.20, Ls.1-5.) Considering those factors, defense counsel requested the district court continue probation. (Tr., p.16, L.24 - p.17, L.1.) However, in response to a question from the district court, defense counsel also acknowledged that a second period of retained jurisdiction would not necessarily be a bad option. (Tr., p.19, Ls.1-6.)

The district court decided that an immediate return to probation would not be appropriate in Mr. Allan's case. (Tr., p.21, Ls.3-7.) As such, it decided to revoke probation, but it also decided to retain jurisdiction again, noting that the rider programs had changed since Mr. Allan had last participated in one. (Tr., p.21, Ls.8-23; R., pp.110-16.) Mr. Allan filed a notice of appeal timely from the order revoking probation. (R., pp.118-19.)

### ISSUE

Whether the district court abused its discretion by revoking Mr. Allan's probation.

### ARGUMENT

#### The District Court Abused Its Discretion By Revoking Mr. Allan's Probation

The decision to revoke probation is one within the district court's discretion. *State v. Chavez*, 134 Idaho 308, 312 (Ct. App. 2000). The district court must determine

“whether the probation is achieving the goal of rehabilitation and whether continuation of the probation is consistent with the protection of society.” *Id.* In this case, a sufficient consideration of the mitigating factors demonstrates continuing Mr. Allan’s probation would be consistent with rehabilitation and protection of society.

As the prosecutor acknowledged, Mr. Allan had been able to successfully comply with the terms of probation for fourteen months. (Tr., p.16, Ls.3-4.) Furthermore, as defense counsel pointed out, Mr. Allan had not relapsed back into drug use during his period of probation. (Tr., p.17, Ls.7-11.) Thus, the evidence in the record indicates that probation was achieving the goal of rehabilitation as it relates to the issues associated with Mr. Allan’s underlying criminal conduct.

Additionally, despite Mr. Allan’s ultimate failure to adhere to all the terms of probation, the point of intermediate sanctions is to allow the probation officer to impose a punishment for this sort of issue and help the defendant refocus, so as to continue the path to rehabilitation in the community. The record indicates that, although intermediate sanctions were authorized, the probation officer did not utilize them in Mr. Allan’s case. (See R., pp.74, 84-85.) That is important since, when confronted with his mistakes, Mr. Allan accepted responsibility for his mistakes. (Tr., p.20, Ls.1-5.) Additionally, in the two months he was in custody as a result of those mistakes, he showed that he could adjust his behavior appropriately in response to that sort of consequence. (See Tr., p.18, Ls.2-15 (discussing Mr. Allan’s efforts to establish a plan to get back on his feet and support his family when released from custody).) Therefore, sufficiently considering all those factors, continuing probation would have better served the goals of

sentencing. As such, the district court abused its discretion by revoking Mr. Allan's probation.

CONCLUSION

Mr. Allan respectfully requests that this Court vacate the order revoking his probation and remand this case for a new disposition hearing.

DATED this 2<sup>nd</sup> day of February, 2017.

\_\_\_\_\_/s/\_\_\_\_\_  
BRIAN R. DICKSON  
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of February, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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INMATE #111600  
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15505 S PLEASANT VALLEY ROAD  
KUNA ID 83634

JASON D SCOTT  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

D DAVID LORELLO  
ADA COUNTY PUBLIC DEFENDER  
E-MAILED BRIEF

KENNETH K JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
E-MAILED BRIEF

\_\_\_\_\_/s/\_\_\_\_\_  
EVAN A. SMITH  
Administrative Assistant

BRD/eas